

Order

Michigan Supreme Court
Lansing, Michigan

October 29, 2010

Marilyn Kelly,
Chief Justice

141339 & (65)

Michael F. Cavanagh
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway
Alton Thomas Davis,
Justices

GERALD EDWARDS,
Plaintiff-Appellee,

v

SC: 141339
COA: 280023
Washtenaw CC: 06-000782-AV

CAPE TO CAIRO, L.L.C.,
Defendant-Appellant.

On order of the Court, the motion for leave to file brief amicus curiae is GRANTED. The application for leave to appeal the March 18, 2010 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

MARKMAN, J. (*dissenting*).

In the summer of 2001, plaintiff planned a trip to Africa. He prepaid defendant, a tour operator, for trip expenses, including airline tickets. After the 9/11 disaster, plaintiff cancelled the trip and sought a refund of his prepayments. The airlines that received these prepayments provided full refunds, but defendant sought to retain a portion of plaintiff's prepayments. The district court ruled that defendant must return all of the prepayments and pay attorney fees under the Michigan Consumer Protection Act (MCPA), and the circuit court and the Court of Appeals affirmed.

Defendant's contract clearly states that "a minimum fee of \$75 [is imposed] on all returned/cancelled tickets." Nothing in this contract states that this fee will only be charged where the airlines also charge such a fee. This is defendant's own fee, and plaintiff, by contracting with defendant to pay for tour expenses on his behalf, agreed to the cancelled ticket fee. Therefore, I would reverse the Court of Appeals in relevant part.



s1026

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 29, 2010

Corbin R. Davis

Clerk